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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 61

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS, AND E. E. FUQUA,
Petitioners

vs.

CENTRAL AIRLINES, INC., *Respondent*

Respondent's Reply to Petition for Certiorari

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 656

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS, AND E. E. FUQUA, *Petitioners*

vs.

CENTRAL AIRLINES, INC., *Respondent*

Respondent's Reply to Petition for Certiorari

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Central Airlines, Inc., respondent herein, respectfully prays that the petition for certiorari be denied, and in support of such prayer presents the following:

STATEMENT OF THE CASE

The facts of this case, as stated in the opinion of the Circuit Court of Appeals for the Fifth Circuit (pages 1a-4a of appendix A in petitioner's application for certiorari), though brief, are essentially correct. The opinion of the Court below states that in April of 1958 Central discharged six of its employees, the individual petitioners herein, because they refused, while under suspension from the company, to attend a hearing at which they were denied the right to have

the union representative present. This was only one of the reasons for the discharge of these individual petitioners, and prominent among the other reasons for their discharge was the absolute refusal on the part of each of the six individual petitioners herein to perform overtime work in the respondent's maintenance shops in early April of 1958, when ordered to do so by the employer, Central Airlines. It was this refusal of these petitioners to work overtime, as ordered to do, and as required by the collective bargaining agreement between the union and respondent herein, that precipitated the so-called hearing or interview at which union representation was denied, for the reason that such representation was not contemplated by the collective bargaining agreement between the union and the respondent. It was only after the individual petitioners' refusal to work the overtime, and their subsequent refusal to discuss their reasons for so failing, with the company, that they were discharged.

QUESTION PRESENTED

The only question presented herein is whether or not petitioners' complaint in the United States District Court for the Northern District of Texas, Fort Worth Division, presents any matter which arises under the Constitution, laws, or treaties of the United States, or in other words presents a federal question which would confer jurisdiction on a District Court of the United States.

ARGUMENT ON THE MERITS

In affirming the dismissal by the Honorable District Court for the Northern District of Texas, Fort Worth Division, the Fifth Circuit Court of Appeals in its opinion stated:

> "The right asserted by the plaintiffs is a creature of contract, not a creature of a federal law."

This has been the contention of respondent herein ever since petitioners' complaint was filed in the District Court below, and to emphasize this contention and the holding of the Fifth Circuit Court of Appeals we refer this Honorable Court to the collective bargaining agreement between Central Airlines, Inc., and the petitioner International Association of Machinists, in an effort to at last convince all concerned that the relief sought by petitioners herein in their complaint involved only the interpretation of a private contract and not the interpretation or construction of any federal law.

It has been asserted that the disputes between the respondent Central Airlines and the individual petitioners herein involved a question of the individual employees-petitioners working overtime, and also involved the refusal of said employees-petitioners to attend an interview held by Central Airlines, when a union representative was not permitted to be present at such interview. That both of these disputes, the overtime and the union representative argument, involved the interpretation or construction of the bargaining agreement between the union and the re-

spondent company, can be readily seen by reference to certain paragraphs of said contract. It was the position of the union, at the outset of this dispute, that the company could not require overtime because overtime was not required or permitted by the contract. Without quoting it, Section 6 goes into considerable detail as to what rates of pay must be paid the employees when overtime is performed, and while this section does not specifically state that the employees shall be required to work overtime, no one could read this section without being certain that it meant, and was understood by all concerned, that overtime could be ordered by the company, and that when it was, certain rates of pay and certain other conditions must be followed. Section 6(i) specifically says:

> "When overtime work is required, the employees involved shall be given as much advance notice thereof as circumstances will permit."

Section 7 of the contract delineates the hours of service for the various employees, but it does not provide that overtime will not be worked.

Section 22 of the collective bargaining agreement clearly discusses the rights of the employer and employees with regard to the handling of complaints or disputes, and the investigation thereof and any discipline as a result thereof. This Section 22 provides, generally, that an employee shall not be disciplined or dismissed without notification in writing, that any employee who is so disciplined or dismissed shall be entitled to an investigation and hearing thereon if he makes written request therefor within seven days

after receiving such notice. Section 22 then continues to provide explicitly the various steps to be taken by any aggrieved employee who desires the investigation and hearing specified in this section. The matter, for instance, is first heard by the Maintenance Supervisor of the company, and if the employee is dissatisfied with the decision of the Maintenance Supervisor, he may appeal, following certain specified procedures, to the Chief Operating Officer of the company, and if still dissatisfied after the decision of the Chief Operating Officer, he may then appeal to the Central Airlines-I.A.M. Board of Adjustment established under the Railway Labor Act.

We mention these various sections contained in the bargaining agreement between the respondent and the union simply to emphasize respondent's contention that the disputes which precipitated the decision of the Neutral Referee and the System Board of Adjustment, and which then precipitated the filing of petitioner's complaint in the United States District Court for the enforcement of the Neutral's award, arise out of and involve only the interpretation, meaning or construction of the bargaining agreement, which is merely a private contract, and do not at all involve the construction of any federal law.

As the Court below stated, it is not enough that a federal law compelled the parties to enter into the contract. The mere fact that Section 184 of the Railway Labor Act (45 U.S.C., Secs. 151-163, 181-188) directed all airlines and airline unions to create system boards of adjustment for the solution and disposi-

tion of minor disputes, or disputes involving contracts between said parties, does not begin to establish any federal question. In this case, the respondent Central Airlines and the union, the I.A.M., by federal mandate contained in Section 184 of the Railway Labor Act, did establish the Central Airlines-I.A.M. Board of Adjustment for the disposition of minor disputes, which means disputes arising out of the operations of the business as contained in the collective bargaining agreement. The rights of the parties will be found in the collective bargaining agreement between the union and the company, and those rights are to be interpreted and enforced by the System Board of Adjustment. Handling or disposition of such disputes or complaints involves the construction of a contract, and not of the Railway Labor Act or any other federal statute. The grievances presented by the individual petitioners, which grievances precipitated the ruling of the Neutral Referee and the System Board of Adjustment, and subsequently the filing of petitioners' complaint to enforce the System Board Award, presented alleged violations of contract, not violations of the Railway Labor Act. Mr. Justice Cardozo, in *Gully vs. First National Bank in Meridian*, 1936, 229 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70, put the matter succinctly in the following language:

> "Federal jurisdiction may be invoked to vindicate a right or privilege claimed under a federal statute. It may not be invoked where the right asserted is non-federal, merely because the plaintiff's right to sue is derived from federal law, or because the property involved was obtained under federal statute. The federal nature of the

> right to be established is decisive. To bring a case within (28 U.S.C. 1331(a)), a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one of the plaintiff's cause of action."

All that can be said in the case now before this Honorable Court is that a federal law simply provided the impetus for the contract which created the System Board of Adjustment, which construed another private contract between the parties (the collective bargaining agreement).

The same question was presented in recent years to the Fifth Circuit Court of Appeals in the cases of *Amalgamated Association of Street, Electric Railway and Motor Coach Employees vs. Southern Bus Lines*, 5 Cir., 1951, 189 F.2d 219, and *Duplisea vs. Main Central Railroad*, 1 Cir., 1960, 260 F.2d 495. In the first cited case, the Fifth Circuit Court of Appeals stated:

> "Upon the allegations of the complaint, we think it clear that the court below did not have jurisdiction over this controversy. No facts are alleged upon which the conclusion can legitimately be based that the District Court independently of the arbitration agreement would have jurisdiction of the 'subject matter of a suit arising out of the controversy between the parties' as required by Section 4 of the Federal Arbitration Act, 9 U.S.C.A., Par. 4 . . . . Viewing the case at bar against this background of established principle, we do not find in it the elements of federal jurisdiction. What is here involved is merely a controversy between the parties as to the construc-

> tion of a contract which allegedly arises out of the laws of the United States respecting collective bargains between employer and employees in interstate commerce; but the right of action asserted does not arise out of those laws but only arises from the subsequent contractual relations of the parties. The wrongful breach of such relations does not confer federal court jurisdiction unless there is diverse citizenship."

In the *Duplisea* case, the First Circuit Court of Appeals, in considering the identical question, said this:

> "The complaint is conveniently vague as to the basis of federal jurisdiction . . . Nor is there any allegation of a breach of a duty imposed or the violation of a right given by the Constitution, the Railway Labor Act, or any other federal statute . . . . Nor does the complaint raise any question as to the validity, construction, or effect of the Constitution or of any law of the United States. On the contrary, under the terms of the complaint, plaintiff seeks damages for an alleged wrongful discharge in violation of the terms of a collective bargaining agreement negotiated by the Railroad and the Brotherhood of Railroad Trainmen under the provisions of the Railway Labor Act."

Petitioner's argument that Section 184 of the Railway Labor Act, which provides for the establishment of System Boards of Adjustment, should be construed so as to compel enforcement of arbitration in federal courts, is effectively answered by the Fifth Circuit Court of Appeals, not only in this case, but in the case of *National Airlines vs. Metcalf*, 5 Cir., 1959,

271 F.2d 817. In the *Metcalf* case, the Fifth Circuit Court of Appeals held that Section 153 of the Railway Labor Act, which specifically provides for enforcement of National Railroad Adjustment Board awards in the District Court of the United States, was specifically made not applicable to airlines, by Section 184 of the Railway Labor Act, and that therefore there is a vast difference between the enforcement provisions of the Act with respect to railroads and with respect to airlines. The Court in the *Metcalf* case quite correctly distinguished between awards of the National Railway Labor Adjustment Board and lower status awards of Airline System Boards, and held that the awards of an Airline System Board, unlike those of the National Railway Adjustment Board, carry "no legislative determination as to their finality or as to there being a basis of federal suit jurisdiction." The Court in the *Metcalf* case went on to state:

> "The legislative digest of Congress is clearly expressed. Such design is to grant to those winning arbitration awards the right to sue on them in federal courts only when and if the Mediation Board creates a National Air Transport Adjustment Board, whose award is ignored or not complied with by the carrier. Then only does Section 153(p) become operative in the air industry."

The Court of Appeals for the Fifth Circuit, in the *Central Airlines* case, said that on this point, to-wit, the question of whether or not Section 184 creates a federal right in the enforcement of an award:

> "We consider our decision in National Airlines

> vs. Metcalf, Fifth Circuit, 1959, 271 F.2d 817, controlling."

Hence, it is settled beyond any doubt that the Court of Appeals for the Fifth Circuit in the *Metcalf* case clearly and unequivocally decided that a system board of adjustment award could not be enforced in the federal courts, under the terms and provisions of Section 184 of the Railway Labor Act.

Petitioners' argument to the effect that if the right of enforcement of a system board of adjustment is not a question for the federal courts, enforcement of such awards would be difficult and perhaps impossible because of the "haphazard vagaries of state law," is effectively answered by the Court below when it points out that the "judicial approach in state courts after arbitration has already taken place has almost invariably shown a healthy respect for enforcement of an award." The Court further said:

> "These statutes vary greatly in their coverage and their procedural requirements and courts in different states vary greatly in the extent of the review which they gave to arbitration awards but, broadly speaking, state courts could be relied on to give effect to an arbitration award, in contrast with their unwillingness to enforce executory submission agreements. In the light of this historical context, it cannot be said that a federal law imposing a requirement of compulsory arbitration but not providing for federal court enforcement of the arbitration award is a half-way measure."

We submit that this statement by the Fifth Circuit

Court of Appeals is a very effective and accurate answer to this contention raised by petitioners. In other words, as stated by the Court of Appeals in the *Central Airlines* case, and in the *Metcalf* case, supra, as well as in *Sigfred vs. Pan American Airways*, 230 F.2d 13, state courts can, as they always have, enforce rights created by federal law, simply by applying federal law.

CONCLUSION

It is clear, we respectfully submit, that the only question here involved is a matter of interpretation of a private contract, and not of any federal law. This is clear from a reading of the petitioners' complaint, upon which the question of whether or not federal jurisdiction attaches must rest, and is clear also as a result of the many other cases herein cited. Before the federal courts have jurisdiction under Title 28 U.S.C.A., Sec. 1331, it must be clear that the matter to be submitted not only involves or concerns, but depends on the interpretation or construction of the Constitution, laws or treaties of the United States. Such is not the case here. We have simply a situation involving complaints made under, and rights dealt with in, a private contract, to-wit, the collective bargaining agreement between respondent and petitioner I.A.M. Respondent respectfully prays that petitioners' application for certiorari be in all things denied.

Respectfully submitted,

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